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APPENDIX A:

ORDER OF ILLINOIS APPELLATE COURT,
FIRST JUDICIAL DISTRICT, SECOND
DIVISION, DECEMBER 29, 1995

THE PEOPLE OF THE STATE OF ILLINOIS,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY,
Plaintiff-Appellee,	)	CRIMINAL DIVISION.
v.	)	No. 91 CR 4485
HUMBERTO RODRIGUEZ,	)	THE HONORABLE DENNIS DERNBACH
Defendant-Appellant.	)	JUDGE PRESIDING.

ORDER

The following evidence was adduced at a hearing on motions to quash their arrest and suppress evidence filed by Humberto Rodriguez ("defendant") and Saleem Muhammed ("co-defendant").[1]

On January 16, 1991, at 4:30 p.m., Chicago police officers Thomas Granias and Anthony Opiola, assigned to the Drug Enforcement Administration (DEA), engaged in a telephone conversation from the DEA office with a "confidential informant" who told them that someone named "Pepito" would be arriving at 4224 North Ashland

[1]Co-defendant is not a party to this appeal.

in a red and white Blazer to pick up "20 kilos" of cocaine that evening around 6:00 or 6:30 p.m. that day.

Shortly following this telephone conversation, Granias and Opiola met the informant at Ashland Avenue and Irving Park Road. During the meeting, the informant described "Pepito" as a male Hispanic, 40 or 45 years old, six feet tall, 250 pounce and wearing "a lot of gold's jewelry." The informant also stated that the red and white Blazer that "Pepito" would be driving did not have any license plates.

At 5:40 p.m. that day, Granias and several other officers arranged surveillance of 4224 North Ashland, which turned out to be an apartment building. Granias testified that at 6:25 or 6:30 p.m., a red and white Blazer with no plates drove into an alley and parked in one of the parking spaces behind the apartment building. A blue Ford Explorer followed the Blazer and pulled into a parking space next to the Blazer. Granias exited his vehicle and walked down the alley into a stairwell where he positioned himself so that he could watch the cars through a window.

He saw co-defendant sitting in the Explorer. Although nothing in the record indicates whether he saw defendant enter the building, Granias testified that he watched as defendant emerged from the rear of the apartment building carrying a blue nylon gym bag. Defendant fit the description of "Pepito" as described by the informant. The officer observed defendant walk to the driver's side of the Explorer and hand the bag to co-defendant. Granias heard defendant say, "be careful" as he

handed over the bag. Defendant then got into the Blazer and drove away from the apartment building.

At that point, Granias radioed the other surveillance officers to inform them of what he had just witnessed. Officer Opiola followed defendant. Officer Granias followed co-defendant in his car as he drove down Ashland. When co-defendant was stopped at a red light on Ashland at School Street, Granias pulled up behind him, exited his car, and approached co-defendant's car on the driver's side and tapped on the window. Granias saw the blue nylon gym bag on the seat with the zipper open about ten inches. In the bag, Granias saw a "rectangular package with the word[s] "Star 500" on it. According to Granias, he immediately knew it was a package of cocaine because he had seen a similar package with the word "Star" printed on it at the DEA office two weeks prior to this incident and learned that it was a brand name used by a "producer" in Columbia. Granias immediately put co-defendant under arrest.

Granias seized the blue bag and opened one of the packages in order to see what was inside. After opening the package, Granias radioed Opiola that he confiscated twenty duct tape-wrapped packages of "suspect cocaine". Opiola, who, as stated earlier, had been following defendant, pulled him over and arrested him at 6:40 p.m.. No contraband was seized from defendant.

During the hearing on their motions to quash and suppress, defendants attempted to question Granias and Opiola about the identity of the informer and how the

informer obtained his information. Granias and Opiola acknowledged that they knew the basis of the informer's information, but the State argued that how the informer got his information would disclose his identity and put him in danger. After a review of the case law cited by co-defendant's counsel, specifically, *Alabama v. White* (1990), 496 U.S. 325, 110 L. Ed. 2d 301, 110 S. Ct. 2412 and *Illinois v. Gates* (1983), 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317, the trial court determined that it would consider the informant as a "tipster" and not an informer. Accordingly the judge ruled that defendants were not permitted to inquire into the tipster's reliability, nor did the officers have to answer questions about his identity or the basis of his information. After the judge's ruling, defendants requested that the State produce the tipster for questioning or, in the alternative, for an *in camera* interview by the trial judge, but the State's objections to defendants' requests were sustained.

At the conclusion of the hearing, the court denied defendants' motions. Thereafter, defense counsel learned of federal grand Jury proceedings involving an investigation of Officer Granias. Although the record is unclear, Granias appears to have been under investigation for allegedly obtaining search warrants based on information he falsely claimed he received from an informer. According to a letter from the U.S. Attorney's office, the allegations at issue in the grand jury proceeding were as follows:

> "[I]n each affidavit, Officer Granias averred that he had received information from a

> confidential informant that narcotics-related activity had taken place at the location for which each search warrant was sought * * * [the informant] advised the government that s/he did not provide the information described in the complaints for search warrant."

There in no evidence that the informant referred to in the grand jury investigation in the same one involved in the instant case. Based on the information furnished by the U.S. Attorney, defendant moved to reopen the cross-examination of Granias in order to discredit his testimony regarding the information he received from his tipster. Several months passed while defendant was attempting to secure further information regarding the grand Jury proceedings. When the circuit court determined that the trial should proceed, Granias had not been formally indicted or convicted.[2] Despite defendant's objections, the trial judge chose to proceed because he did not want defendant to sit in jail while awaiting the result of the grand Jury investigation. Additionally, the judge learned that if recalled to the stand, Granias would not exercise his Fifth Amendment rights regarding the tipster at issue in this case, although he would invoke the Fifth Amendment if he was asked about the informer related to the grand jury proceedings. At a bench trial in which the parties stipulated to the evidence produced at the hearing on the

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[2]There is nothing in the record to indicate whether the officer was ever indicted or convicted.

motions to quash and suppress, defendant was sentenced to fifteen years in the custody of the Department of Corrections, with credit for time served, having been found guilty of possession of a controlled substance with intent to deliver more than 900 grams of cocaine under the provisions of the Illinois Criminal Code of 1961, Ill. Rev. Stat. of 1991, Ch. 56 ½ § 1402 A-2-D (now codified at 720 ILCS 570/402(a)(2)(D)).

Defendant appeals his conviction claiming that the trial court erred in excluding evidence of the tipster's basis for the information he furnished to the police; in finding defendant guilty beyond a reasonable doubt; and in refusing to allow defendant to cross examine Officer Granias regarding the federal grand jury's investigation of how he goes about obtaining search warrants.

Defendant argues that during the hearing on his motion to quash his arrest and suppress evidence, he should have been permitted to inquire into the reliability of the tipster and his information. To find probable cause, the trial court must determine whether "a reasonable and prudent man, having the knowledge possessed by the officer at the time of the arrest, would believe the defendant committed the offense." (*People v. Tiller* (1984), 103 Ill. 2d 226, 237, 469 N.E.2d 147 quoting *People v. Wright* (1968), 41 Ill. 2d 170, 174.) Whether the necessary probability exists is governed not by technical legal rules, but rather by commonsense considerations that are factual and practical. (*People v. Mitchell* (1970), 45 Ill. Id 148, 153-54, 258 N.E.2d 345, cert. denied (1970), 400 U.S. 882, 27 L.Ed. 2d 120, 91 S. Ct. 117; **overruled in**

part on other grounds *People v. Laws* (1981), 84 Ill. 2d 493, 419 N.E.2d 1150.)

Probable cause clearly existed to arrest defendant based on the mere fact that the police saw him hand co-defendant a bag, found a short time later to be filled with cocaine, and tell co-defendant to "be careful"[3] A "reasonable and prudent" person with Officer Granias's knowledge that the white substance contained in the bag was cocaine could, with great justification, believe that defendant had committed a crime by having had the cocaine in his possession and handing it over to co-defendant. (See *People v. Jones* (1994), 269 Ill. App. ad 797, 635 N.E.2d 961, **appeal denied**, (1995) 159 Ill. 2d 574, 647 N.E.2d 1013 (Probable cause existed to seize defendant where informer told police that drugs would be delivered to defendant, and police witnessed someone remove a red bag from the trunk of a car, remove a bag filled with powder, and hand the bulging red bag to defendant)). Here, the tipster's reliability was clearly irrelevant since probable cause was easily established without having to resort to his information; therefore, the trial court did not err in prohibiting defendant from questioning the officers about the tipster's basis for that information. See *People v. Peoples* (1993) 155 Ill. 2d 422, 456, 616 N.E.2d 294, *cert. denied* 126 L. Ed 2d 578, 114 S. Ct. 613 (The admissibility of evidence is dependent

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[3]It is important to note that it was only after Granias determined that the bag contained cocaine that he radioed Opiola with instructions to arrest defendant.

upon a showing that it is legally relevant); *People v. James* (1987), 118 Ill. 2d 214, 222, 514 N.E.2d 998, cert. denied (1988), 484 U.S. 1045, 98 L. Ed. 2d 866, 108 S. Ct. 780; *People v. Tisler,* 103 Ill. Id at 236-37, 469 N.E.2d 147 (If the facts supplied in an informant's tip are essential to a finding of probable cause, the tip must meet standards of reliability before it can be considered in determining probable cause). Moreover, the reasons for the trial court's barring the inquiry sought by defendant are of no moment, for a court of review may affirm on any basis supported by the record. *Estate of Johnson v. Condell Memorial Hospital* (1988), 119 Ill. 2d 496, 502, 520 N.E.2d 37.

Defendant also argues that in connection with his motion to suppress, he should have been permitted to question the officers about the tipster's basis for the information he supplied to them. However, defendant overlooks that the cocaine was seized from co-defendant; therefore, he lacked standing to assert co-defendant's constitutional right against unlawful seizure. (*People v. McNeil* (1972), 53 Ill. 2d 187, 290 N.E.2d 602). In *McNeil*, a case in which defendant sought to suppress evidence seized in an allegedly unlawful search of property owned by a co-defendant, the supreme court held that pursuant to the holding in *Alderman v. United States* (1969), 394 U.S. 165, 22 L. Ed. 2d 176, defendant had no standing to assert a Fourth Amendment right against unlawful searches and seizures because such rights are "personal rights" and cannot be "vicariously asserted." (*McNeil,* 53 Ill. 2d at 190-191, 290 N.E.2d 602). "[T]he defendant must show", the supreme court declared, "how his constitutional rights have been violated in order to

have standing to challenge the validity of a search or seizure." (*McNeil*, 53 Ill. 2d at 191.) Accordingly, inasmuch as cocaine in the case *sub judice* was found in co-defendant's car and defendant was not on the premises when the search was conducted, we can safely conclude that defendant did not have standing to maintain a motion to suppress the evidence. *Johnson*, 119 Ill. 2d 496, 502, 520 N.E.2d 37 (Court of review may affirm on any basin supported by the record).

Furthermore, although in light of the result we have already reached we need not discuss the point, we can readily agree with the trial court that for the purposes of defendant's motion to quash his arrest and suppress the evidence, the tipster's information can properly be considered a "tip" instead of information from a "reliable source". Under these circumstances, substantial corroboration is sufficient to establish an informant's veracity and to permit an inference that the information is reliable. (*People v. Tisler*, 103 Ill. 2d at 251, 469 N.E.2d 147.) The proper focus is "whether the actions of the suspects, whatever their nature, give rise to an inference that the informant is credible and that he obtained his information in a reliable manner.'" (*People v. Tisler*, 103 Ill. 2d at 251, 469 N.E.2d 147, quoting *Illinois v. Gates*, 462 U.S. at 269, 76 L. Ed. 2d at 568, 103 S. Ct. at 2348 (White, J., concurring)). Therefore, as long as there exists substantial corroboration of the information, the tipster's basis for the information is irrelevant.

In the instant case, the tipster stated that a male Hispanic, 40 or 45 years of age, six feet tall, 250 pounds,

wearing "a lot of gold" jewelry would be picking up cocaine at 4224 North Ashland in a red and white Blazer with no license plates around 6:00 or 6:30 p.m.. In fact, such a person, driving such a car arrived at such a location at the indicated time. Furthermore, Officer Granias observed defendant emerge from the apartment building, carrying a bag, and heard him say, "be careful" as he handed the bag to co-defendant. Because all of the tipster's detailed information was more than sufficiently corroborated, it was reasonable for the trial court to infer the tipster's veracity and the reliability of the information, and to deny defendant the opportunity to question the tipster's basis for the information. *People v. Tisler,* 103 Ill. 2d 226, 469 N.E.2d 147.

Defendant argues that he was not guilty beyond a reasonable doubt because there was insufficient evidence of defendant's knowledge that the contents of the gym bag were contraband. In order to prove that defendant is guilty of possession of drugs, the State must establish that defendant had knowledge that the object he possessed was drugs. (*People v. Embry* (1960), 20 Ill. 2d 331, 334, 169 N.E.2d 767). Sufficiency of the evidence to sustain a conviction on review is determined by whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979), 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781; *People v. Collins* (1985), 106 Ill. 2d 237, 478 N.E.2d 267 *cert. denied* (1985), 474 U.S. 935, 88 L. Ed. Id 274, 106 S. Ct. 267.) All evidence is reviewed in a light most favorable to the prosecution.

(*People v. Roppo* (1992), 234 Ill. App. ad 116, 125, 599 N.E.2d 974 *appeal denied* (1992), 146 Ill. 2d 646, 606 N.E.2d 470). Defendant acknowledges that in order to reverse a criminal conviction, a reviewing court must find that the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. (*People v. Sutherland* (1992), 155 Ill. 2d 1, 17, 610 N.E. Id 1, *cert. denied* (1993), 126 L. Ed. 2d. 130, 114 S. Ct. 170). Defendant also recognizes that because knowledge is rarely proven directly, it may be demonstrated by circumstantial evidence. *People v. Cristantos* (1991), 211 Ill.App. 3d 870, 570 N.E.2d 843, See *Embry,* 20 Ill. 2d at 334, 169 N.E.2d 767 (Knowledge may be proven by evidence of "acts, declarations, or conduct of the accused from which the inference may be fairly drawn that he knew of the existence of the narcotics * * *").

Defendant maintains, however, that no evidence was presented regarding his knowledge of the contents of the blue bag because the only evidence against him was that he was seen coming from the rear of the apartment building carrying the bag and that he admonished co-defendant as he handed him the bag to "be careful". On the other hand, the State cites *People v. Birge* (1985), 137 Ill. App. ad 781, 485 N.E.2d 37 for the proposition that the trier of fact is permitted to infer knowledge of the presence of drugs if a large amount is involved. *Birge,* 137 Ill. App. ad at 790, 485 N.E.2d 37, citing *People v. Luetkemever* (1979), 74 Ill. App. ad 708, 393 N.E.2d 117, cert. denied (1980), 446 U.S. 938, 64 L. Ed. 2d 791, 100 S. Ct. 2157 (Three hundred pounds of cannabis was found

on premises leased by defendant and occupied by defendant on a part time basis).

The cocaine in the blue gym bag had an approximate street value of $1,610,987.70. A cargo of such worth; one can reasonably infer under the circumstances surrounding the transaction in this cane, does not ordinarily come into the possession of a person ignorant of its being contraband. In light of these circumstances, and the foregoing citation of authorities, the trial court could fairly infer that defendant had knowledge that the bag possessed cocaine; therefore his guilt was established beyond a reasonable doubt.

As a final matter, defendant argues that he should have been permitted to cross examine Officer Granias regarding the federal grand jury investigation. As stated earlier, after the hearing on defendant's motion to quash and suppress, defendant discovered that Granias was the subject of a grand Jury investigation because, according to allegations lodged against him, he falsified information about an informer in affidavit he used to obtain search warrants. There is nothing in the record to indicate that Granias was indicted or convicted as a result of the investigation. Although the record indicates that if asked about the informer involved in the investigation, Granias would exercise his Fifth Amendment rights, he would not invoke those rights if he were asked about the tipster involved in the instant case.

The trial court has discretion to determine the manner and scope of cross examination (*People v. Dortch*

(1982), 109 Ill. App. ad 761, 441 N.E.2d 100, *cert. denied Dortch v. Cohn* (1989), 490 U.S. 1049, 104 L. Ed. 2d 429, 109 S.Ct. 1961) and its decision to limit the scope of cross examination will not be reversed absent an abuse of discretion resulting in prejudice to the defendant. *People v. Sandoval* (1990), 135 Ill. 2d 159, 552 N.E.2d 726, *cert. denied* (1990), 498 U.S. 938, 112 L. Ed. 2d 307, 111 S. Ct. 343.

Because we find that the issue of the tipster is irrelevant as to whether probable cause existed to arrest defendant and as to whether the cocaine was properly seized insofar as it relates to the case against defendant, we hold that the trial judge did not abuse his discretion in limiting the scope of cross examination; therefore, defendant's argument is without merit. Moreover, it is also important to note that Officer Granias' testimony regarding the informer was corroborated by Officer Opiola, who, based on the record, was not under any investigation.

For all of the foregoing reasons, the judgment of the circuit court in affirmed.

Affirmed.

SCARIANO, P.J., with DIVITO, J., and BURKE, J., concurring.

APPENDIX B:

ILLINOIS SUPREME COURT
DENIAL OF PETITION FOR
LEAVE TO APPEAL

ILLINOIS SUPREME COURT
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June 5, 1996

Mr. Elliott T. Price
Attorney at Law
One No. LaSalle St. - #4600
Chicago, IL 60602

No. 80530 - People State of Illinois, respondent, v. Humberto Rodriguez, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 27, 1996.

APPENDIX C:

SUPREME COURT OF THE UNITED STATES
NOTIFICATION OF ALLOWANCE OF
APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION
FOR A WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

September 11, 1996

Mr. Elliott Price
One North LaSalle Street
Suite 4600
Chicago, IL 60602

Re: *Humberto Rodriguez v. Illinois*
Application No. A-177

Dear Mr. Price:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on September 11, 1996, extended the time to and including November 1, 1996.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

Sandra Elliott Spagnolo
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

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NOTIFICATION LIST

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